Supreme Court, U. S.
FILED
AUG 4 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

78-196

No. A-1001

ALFRED SWEENEY,

Petitioner,

v.

COTE & RENEY LUMBER CO., INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BUCKLEY & ZOPF, ESQS.
Respondent's Attorneys
Box 1202
Claremont, N.H. 03743

ALFRED SWEENEY
Petitioner pro se
P.O. Box 410
Claremont, N.H. 03743

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

CITATION TO THE OPINIONS BELOW 1
JURISDICTION..... 2
QUESTIONS PRESENTED 3
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED..... 3
STATEMENT..... 4
REASON FOR GRANTING THE WRIT 9
CONCLUSION 9
APPENDIX A OPINIONS BELOW 1a
APPENDIX B STATUTES..... 1b

TABLE OF AUTHORITIES

Cases:
Lowe v. Jacobs, 243 F. 2nd 432 (5th Cir. 1957)..... 9
Statutes:
16 U.S.C. §470 5
18 U.S.C. §241 7
28 U.S.C. §1254(1) 2
28 U.S.C. §1443 3,9
28 U.S.C. §1446(e)..... 3,8
Constitutional provisions:
Fourteenth Amendment, United States Constitution 3,9
Rules:
Rule 81(c), Federal Rules of Civil Procedure 4
Miscellaneous:
Moore's Judicial Code Commentary..... 8

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. A-1001

ALFRED SWEENEY,

Petitioner,

v.

COTE & RENEY LUMBER CO., INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered on the 8th day of March 1978.

CITATIONS TO OPINIONS BELOW

The unreported order of the United States District Court for the District of New Hampshire denying petitioner's motion for an order vacating judgment of State Court and remanding case to the State Court was entered on February 2, 1978 and is printed in Appendix A.

The order of the Court below dismissing petitioner's appeal from the remand order and denying any appellate jurisdiction was accompanied by an unreported memorandum and entered on March 8, 1978 and is printed in Appendix A.

The order of the Court below dismissing petitioner's appeal from the district court's denial of petitioner's motion for an order vacating judgment of the state court was accompanied by an unreported memorandum and entered on April 7, 1978 and is printed in Appendix A.

The order of the Court below granting petitioner leave to file a petition for rehearing was entered on May 5, 1978 and is printed in Appendix A.

The order of the Court below denying petitioner's petition for rehearing was accompanied by an unreported memorandum and entered on May 17, 1978 and is printed in Appendix A.

The Writ of Attachment and Referee's Report of the Sullivan County, State of New Hampshire, Superior Court was made and entered on January 31, 1978 after the case had been removed to Federal Court and before remand to State Court and is printed in Appendix A.

JURISDICTION

The judgment of the Court of Appeals printed in Appendix A hereto was entered on March 8, 1978. Mr. Justice Brennan granted an order extending the time in which to file a petition for a Writ of Certiorari to and including August 4, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(l).

QUESTIONS PRESENTED

I. (a) Could a case commenced in state court be removed to a district court of the United States pursuant to 28 U.S.C. §1443 wherein the defendant has been denied equal protection of the law due to a conspiracy of "lawyer after lawyer after lawyer"?

(b) Should petitioner have a hearing in Federal District Court to be given the opportunity to show that the above-entitled case was removed to Federal Court pursuant to 28 U.S.C. §1443 due to the existence of a conspiracy of lawyers, with direct ties to state judicial posts, who have denied petitioner, under color of authority as officers of the court, equal protection of the law?

II. In the absence of a finding that this cause was removed to Federal Court pursuant to 28 U.S.C. §1443, should petitioner's motion in Federal Court to vacate the judgment of the state court be granted, since the state court's proceeding and judgment was held after removal to Federal Court and prior to remand?

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

1) The Fourteenth Amendment, United States Constitution.

2) The federal statutes involved are 28 U.S.C. §1443, 28 U.S.C. §1446(e). Their texts are set forth in Appendix B.

STATEMENT OF THE CASE

I
Initial Proceedings

Respondent's initial pleading setting forth the claim for relief and Writ of Summons with Petition to Attach with Notice of the Superior Court of Sullivan County State of New Hampshire was apparently tossed over a snowbank onto petitioner's coveted historic New Hampshire property and then found by petitioner, at that time a resident of New York, just before New Year's Day 1978.

On January 26, 1978 petitioner petitioned the United States District Court pursuant to Rule 81(c) of the Federal Rules of Civil Procedure to remove this cause to the Federal Court.

Petitioner, answering the initial pleading, rather than default in state court, requested a hearing before a presiding justice and a hearing was scheduled for January 17, 1978 by the Clerk of the Superior Court before the Clerk rather than before a Judge.

Prior to the scheduled hearing hour the Deputy Clerk of the Superior Court indicated that petitioner's hearing might not be open to the public. At the proceeding on January 17, 1978 petitioner moved, before the Clerk acting as judge, for a continuance in order to find an attorney. A two weeks continuance to January 31, 1978 was given with the admonishment that there would be no other continuance. Throughout this process the Clerk acting as judge smoked a cigar while opposing counsel addressed the bench as "Henry".

II
Role of Attorneys

Petitioner found it further worrisome that opposing counsel, the firm of Buckley and Zopf, had been petitioner's counsel on other matters directly related to this matter wherein petitioner is named a defendant. Attorney Zopf, of respondent's law firm, while being retained to represent petitioner, in petitioner's attempt to protect his historic house from the Town of Unity by building a section of road to take the place of the road that by its proximity to the house threatens the historical character of the house, sought out three mysterious people to attempt to rebut a professional engineer's report that was highly favorable to petitioner's cause. Attorney Buckley had previously advised petitioner not to get a professional engineer's evaluation and then had abandoned petitioner after becoming aware that the Town Counsel of the Town of Unity had taken a personal interest in favor of his private client, a town selectman, in this road discontinuance matter. Neither Attorney Buckley nor Attorney Zopf nor any other member of the New Hampshire Bar ever informed petitioner that his house might have protection under 16 U.S.C. §470. Attorney Zopf has been on the Board of Governors of the New Hampshire Bar Association.

It is petitioner's understanding that selectmen of the towns choose potential jurors in State Court. Petitioner found this also worrisome since a past selectman, Harold Sears, resident on land adjoining petitioner's Unity, New Hampshire property, had threatened to kill petitioner and had apparently used his office of selectman and private relationship to Judge Denault, of the Claremont District Court, the Town of Unity's attorney and concurrently Mr.

Sears' private attorney, to form a conspiracy to injure, oppress, threaten and intimidate petitioner because he covets petitioner's historic home. Attorney Denault has openly showed his favorable interest towards Selectman Sears' desire to force petitioner to sell out at a distress price. Other selectmen have made statements showing their prejudiced attitude towards petitioner.

Petitioner has been unsuccessful in attempting to discontinue the road that threatens the historical character of his house even though he built a *superior* alternative road. Yet since then, in at least three instances the town has allowed road discontinuances without those desirous of such discontinuance having to build *any* alternative road.

Petitioner filed a pre-Watergate complaint with the Bar Association against Attorney Denault that was apparently dismissed because of Attorney Denault's feeling that petitioner's complaint was an "harassment" and because petitioner had written letters to public officials.

Petitioner filed a post-Watergate complaint with the Bar Association against Attorney Charles Douglas III, now a New Hampshire Supreme Court Justice, that a three man hearing panel decided on such complaint that Attorney Douglas should not have billed petitioner and that petitioner should not have filed a complaint against Attorney Douglas with the United States Postal Inspection Service. However, petitioner would not have filed such complaint with the Inspection Service if Attorney Douglas had not persisted in dunning and threatening petitioner with "court action" because of petitioner's refusal to pay Attorney Douglas' tendered bill which the three man panel decided should not have been sent. On the basis of petitioner's complaint to the Inspection Service, Attorney Douglas threatened by letter to initiate a "libel suit" against

petitioner. Attorney Douglas did cause a default judgment to be entered in Concord District Court against petitioner for petitioner's failure to pay the bill that the three man hearing panel later was to decide should not have been sent.

Petitioner filed a complaint on September 23, 1976 with the United States Attorney in Concord, New Hampshire under 18 U.S.C. §241, against the Selectmen of the Town of Unity and the Town's attorney, and others. That complaint was referred by the United States Attorney to the FBI and petitioner has direct knowledge that the FBI spent at least three hours investigating such complaint.

Petitioner, because of the aforementioned difficulties with the hierarchy of the State's judicial/political apparatus, specifically sought an out of state forestry agent, the New England Forestry Foundation of Boston, Massachusetts, to handle "all necessary details" for a sale of timber on his land. Such sale of timber being the vehicle for respondent to initiate this case. Petitioner relied exclusively and entirely on the Forestry Foundation concerning this timber sale matter until he received a threatening letter from the Forestry Foundation's New Hampshire lawyer that relied on the "feel(ing)" of the respondent as to respondent's claim. Petitioner paid the Forestry Foundation an approximately $3,000 fee for this timber sale and left the matter in the Foundation's hands, never initiating any contact with the respondent.

Petitioner has sought out a number of New Hampshire attorneys seeking to retain counsel one of whom, Attorney Michael Hall, charged petitioner $75 just for an initial interview without giving any discernible advice and after having shifted his attitude towards petitioner's cause after petitioner had related facts concerning other New Hampshire attorneys handling of petitioner's attempts to protect his historic house.

III
State Court Proceeding After Removal and Before Remand

On January 26, 1978 petitioner filed a removal petition with a bond in the United States District Court and served the respondent and the Clerk of the State Court with a copy of such petition and immediately thereafter on that date sought, by filing with the Clerk of the Federal Court, an ex parte order staying further state court proceedings. The District Court never ruled on said order but the petitioner then relied on *Moore's Commentary on the United States Judicial Code* 0.03(42) page 277 which states "... even in the absence of such an injunction ¶ 1446(e) should be held to operate as a statutory stay upon state court proceedings. Any further proceeding in the state court would be a nullity.." When petitioner on January 31, 1978 requested of the State Court Clerk a certified copy of the state court proceedings the Clerk instead, acting as Judge, began proceedings which granted a Writ of Attachment against petitioner's New Hampshire property with its historic house to the respondent. On February 1, 1978 Petitioner moved in the United States District Court to vacate the State Court's Writ of Attachment on the previous day. Said motion was denied by the District Court and the case remanded on February 2, 1978. Petitioner appealed to the court below on February 27, 1978 from the district court's order denying motion for order vacating judgment of state court and remanding case. The Court of Appeals denies appellate jurisdiction on any part of this case.

REASONS FOR GRANTING WRIT

1) The question of bringing into the focus of 28 U.S.C. §1443 a pattern of lawyers seeking to deprive a citizen of his Fourteenth Amendment rights has not been, but should be, settled by this Court.

2) The court below has decided a federal question in a way in conflict with the Fifth Circuit which in Lowe v. Jacobs, 243 F. 2nd 432, held that a state court, after removal of case to Federal Court, was deprived of jurisdiction to proceed with any phase of litigation unless and until case would be remanded.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted.

ALFRED SWEENEY
Petitioner pro se
P.O. Box 410
Claremont, N.H. 03743

BUCKLEY & ZOPF, ESQS.
Respondent's Attorneys
Box 1202
Claremont, N.H. 03743

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Cote & Reney Lumber Co., Inc.

v. Civil No. 78-28

Alfred Sweeney

ORDER

The defendant has brought a Petition to Remove the above case from the Sullivan County Superior Court pursuant to the provisions of Rule 81(c).

This case has been improvidently removed on two grounds. First, Title 28, United States Code, Section 1446(b) requires that a Petition to Remove "be filed within 30 days after the receipt by defendant, through service or otherwise, of a copy of the initial pleadings setting forth the claim for relief." The return of service indicates that the Sheriff made service at the defendant's abode on December 13, 1977. The Petition to Remove was not filed in this court until January 26, 1978, more than the 30 days allowed under Title 28, United States Code, Section 1446(b).

Second, both the plaintiff and the defendant are residents of the State of New Hampshire. There is no diversity of citizenship as required by Title 28, United States Code, Section 1332. This court does not have original jurisdiction over the matter as required by Title 28, United States Code, Section 1441(a).

It is, therefore, ordered that pursuant to Title 28, United States Code, Section 1447(d), Defendant's Motion for Order Vacating Judgment of State Court is denied. All orders made by the Sullivan County Superior Court shall remain in full force and effect pursuant to the provisions of Title 28, United States Code, Section 1450. The case is hereby remanded.

SO ORDERED.

/s/Hugh S. Bownes
United States Circuit Judge,
Sitting By Designation

February 2, 1978

cc: Buckley & Zopf, Esqs.
Mr. Alfred Sweeney
Henry Shaheen, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Misc. No. 78-8019.

COTE & RENEY LUMBER CO., INC.,
Plaintiff, Appellee,

v.

ALFRED SWEENEY,
Defendant, Appellant.

MEMORANDUM AND ORDER

Entered March 8, 1978

Mr. Sweeney appeals from the district court's order remanding this suit to Sullivan County Superior Court in New Hampshire and denying his motion for reconsideration. W. lack jurisdiction to review these orders, though, because the suit was not, and could not have been, removed to federal court pursuant to section 1443 of Title 28. *Georgia v. Rachel,* 384, n.22 (1966). Only when the suit was removed to federal court pursuant to section 1443 is the order remanding the suit to state court reviewable on appeal. 28 U.S.C. § 1447(d). Hence, we hereby dismiss this appeal for lack of appellate jurisdiction.

By the Court:

/s/ Dana H. Gallup
Clerk.

[Cert. cc: Clerk, U.S.D.C., N.H.]
[cc: Mr. Chandler and Mr. Sweeney.]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Misc. No. 78-8019.

COTE & RENEY LUMBER CO., INC.,
Plaintiff, Appellee,

v.

ALFRED SWEENEY,
Defendant, Appellant.

MEMORANDUM AND ORDER
Entered April 7, 1978

Since the district court's order denying the motion to vacate is interlocutory and not conclusive on the state court in the proceedings on remand, the appeal from the order is dismissed for lack of appellate jurisdiction. 1A *Moore's Federal Practice* ¶0.169[2.-2] at 575, n.3, 576-77 (2d ed. 1974).

By the Court:

DANA H. GALLUP, Clerk.

By /s/ Francis P. Scigliano
Chief Deputy Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Misc. No. 78-8019.

COTE & RENEY LUMBER CO., INC.,
Plaintiff, Appellee,

v.

ALFRED SWEENEY,
Defendant, Appellant.

ORDER OF COURT
Entered May 5, 1978

Upon motion,

Leave is granted appellant to file a petition for rehearing today.

By the Court:

/s/ Dana H. Gallup
Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Misc. No. 78-8019.

COTE & RENEY LUMBER CO., INC.,
Plaintiff, Appellee,

v.

ALFRED SWEENEY,
Defendant, Appellant.

Before COFFIN, Chief Judge,
and CAMPBELL, Circuit Judge.

MEMORANDUM AND ORDER

Entered: May 17, 1978

In his petition for rehearing, appellant avers that we have jurisdiction of this appeal under 28 U.S.C. § 1292 (a) (1). Whether or not we have jurisdiction, though, this appeal has been rendered moot by the remand of the underlying suit

intact to state court; we lack the authority to reverse the remanding order (28 U.S.C. § 1447 (d), to direct the state court to vacate its order of attachment, or to grant appellant any other effectual relief. Hence, appellant's petition for rehearing is hereby denied. *International Brotherhood of Teamsters v. Zantop Air Transport Corp.*, 394 F.2d 36, 40-41 (6th Cir. 1968); See *In Re Bear River Drainage District*, 267 F.2d 849, 851-52 (10th Cir. 1959).

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Mr. Chandler and Mr. Sweeney]

No.

SUPERIOR COURT

WRIT OF ATTACHMENT
and
TRUSTEE PROCESS

Cote & Reney Lumber Co., Inc.

v.

Alfred Sweeney

Cote & Reney Lumber Co., Inc., Endorser
By Buckley & Zopf, its Attorney
By

The State of New Hampshire Superior Court
Sullivan, SS.

Filed Jan. 31, 1978

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT
SULLIVAN, SS. SEPTEMBER TERM 1977

#8537 - Cote & Reney Lumber Co., Inc. v. Alfred Sweeney

REFEREE'S REPORT

This matter was originally scheduled for hearing before the undersigned as Referee in the Superior Court Room in Newport, New Hampshire on January 17, 1978 on Plaintiff's Petition for Attachment with notice. At this time the defendant requested a continuance to retain the services of an attorney over a vigorous protest by the plaintiff. Consequently, no hearing took place on January 17, 1978.

The parties returned on January 31, 1978 for said hearing. The Referee asked the defendant if he was being represented by counsel. He replied that he is representing himself. The Referee then inquired if he had tried to obtain counsel and he answered in the negative. He further admitted that he did not contact, see, or talk to any attorney. The undersigned is of the opinion that the defendant never intended to get an attorney, and that the continuance requested by the defendant was merely dilatory.

Before we entered into the hearing, the defendant filed copies of a Petition for Removal to the U. S. District Court and he stated that any hearing held here today would be a nullity. The plaintiff stated he knew nothing about the case being removed and the undersigned also advised him that this Court had no notification from the U. S. District Court, and this hearing would be heard as scheduled. The defendant stated that in his opinion the hearing is a nullity and that he would not participate in this hearing. He wanted to leave, but the undersigned insisted that he remain to hear what the plaintiff had to say.

The plaintiff stated that their place of business is in Grantham, New Hampshire. The President of said Company had entered into a Contract with the defendant on October 7, 1976. The plaintiff dealt with the New England Forestry Foundation out of One Court Street, Boston, Massachusetts who acted as an agent for the defendant. The said foundation had sent letters to all interested Timber Buyers in this area. The plaintiff subsequently went out and looked at the land and then submitted his bid, which bid was accepted. The plaintiff paid $22,794.55 to said foundation which represented the full amount that the contract had called for. Plaintiff entered on the defendant's land on October 7, 1976 and cut timber until December 1976. They told a man named Bush, who was a representative of the foundation, that they had another job to go to and that they would be back to finish cutting the rest of the timber at a later date. Mr. Bush advised the plaintiff that this was all right. Due to snow and wetness the plaintiff was not able to enter the defendant's land to finish cutting the timber until the Spring of 1977. He had cut 233,050 feet of timber and the contract called for 412,500 board feet. When the plaintiff tried to reenter the defendant's land in June of 1977 to cut the

remaining timber, he was advised by Mr. Bush that the defendant did not want him on his land. The plaintiff believes that there is approximately 179,400 feet of timber that was marked and designated by the foundation to be cut by the plaintiff. The plaintiff further believes that the value of the standing timber is $10,000.00 and that he will recover a judgment in this action. He does not know of any other asset that the defendant owns in this state and that is why he would like an attachment in the amount of $10,000.00. The defendant stated on January 17, 1978 that he is living in New York State and that he comes to Sullivan County periodically.

At the conclusion, the defendant restated that he considers this hearing a nullity and does not wish to participate in this hearing.

RECOMMENDATION:

The plaintiff be granted permission to make real estate attachment in the amount of $10,000.00.

Respectfully submitted,

/s/ Henry Shaheen
REFEREE

APPENDIX B

Page 7590

§ 1446. Procedure for removal.

(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

Page 1445

§ 1443. Civil rights cases.

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

Page 3799-80
16 U.S.C.

§ 470. Congressional finding and declaration of policy.

The Congress finds and declares—

(a) that the spirit and direction of the Nation are founded upon and reflected in its historic past;

(b) that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(c) that, in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation; and

(d) that, although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.